

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON**

LYLE MARK COULTAS,

Plaintiff,

v.

STEVEN PAYNE, *et al.*,

Defendants.

Case No. 3:12-cv-1132-AC

**ORDER ADOPTING FINDINGS
AND RECOMMENDATIONS**

United States Magistrate Judge John V. Acosta issued Findings and Recommendations in this case on September 23, 2013. Dkt. 59. Judge Acosta recommended that Plaintiff's motion for leave to file an amended complaint (Dkt. 49) be denied.

Under the Federal Magistrates Act ("Act"), the Court may "accept, reject or modify, in whole or in part, the findings or recommendations made by the magistrate." 28 U.S.C.

§ 636(b)(1). If a party files objections to a magistrate's findings and recommendations, "the court shall make a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made." *Id.*; Fed. R. Civ. P. 72(b)(3).

For those portions of a Magistrate’s findings and recommendations to which neither party has objected, the Act does not prescribe any standard of review. *See Thomas v. Arn*, 474 U.S. 140, 152 (1985) (“There is no indication that Congress, in enacting [the Act], intended to require a district judge to review a magistrate’s report[.]”); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (*en banc*) (the court must review *de novo* magistrate’s findings and recommendations if objection is made, “but not otherwise”). Although in the absence of objections no review is required, the Magistrates Act “does not preclude further review by the district judge[] *sua sponte* . . . under a *de novo* or any other standard.” *Thomas*, 474 U.S. at 154. Indeed, the Advisory Committee Notes to Fed. R. Civ. P. 72(b) recommend that “[w]hen no timely objection is filed,” the Court review the magistrate’s recommendations for “clear error on the face of the record.”

Plaintiff did not specifically file an objection to this particular Findings and Recommendation, but given that courts construe *pro se* filings liberally and the issues underlying Plaintiff’s motion for leave to amend are similar to the issues argued in Plaintiff’s objections to the Findings and Recommendation to grant Defendants’ summary judgment motion (Dkt. 58), this Court will construe those objections as objections to the pending Findings and Recommendation. The Court has reviewed *de novo* the portions of Judge Acosta’s Findings and Recommendation to which Plaintiff has objected. The Court agrees with Judge Acosta’s reasoning and ADOPTS those portions of the Findings and Recommendation.

For those portions of Judge Acosta’s Findings and Recommendation to which neither party has objected, this Court follows the recommendation of the Advisory Committee and reviews those matters for clear error on the face of the record. No such error is apparent.

The Court **ADOPTS** Judge Acosta's Findings and Recommendation. Dkt. 59. Plaintiff's motion to amend his Complaint (Dkt. 49) is DENIED. The Court further finds that any appeal from this Order would not be taken in good faith and Plaintiff's *in forma pauperis* status should be revoked pursuant to 28 U.S.C. § 1915(a)(3).

IT IS SO ORDERED.

DATED this 28th day of October 2013.

/s/ Michael H. Simon
Michael H. Simon
United States District Judge